UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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| IN THE MATTER OF THE NEW CASSEL/HICKSVILLE GROUNDWATER CONTAMINATION SUPERFUND SITE<br><br>1st State LLC, 101 Frost Street, LP, 570 Properties, Inc., 1150 Motor Parkway, LLC, Amee Patel, Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen Corp., Grand Machinery Exchange, Inc., HDP Printing Industries, Corp., IMC Eastern Corp. (f/k/a IMC Magnetics Corp.), Island Transportation Corp., Nest Equities, Inc., Next Millennium Realty, LLC, Patel Trust July 29 1977CALIF, Rajen Patel, Tishcon Corporation, Utility Manufacturing Co., Inc.,<br><br>Respondents.<br><br>Proceeding under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, Of 1980, as amended, 42 U.S.C. §9606(a). | Index No.: CERCLA-02-2015-2019 |

ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN

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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued to 1st State LLC, 101 Frost Street, LP, 570 Properties, Inc., 1150 Motor Parkway, LLC, Amee Patel, Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen, Corp., Grand Machinery Exchange, Inc., HDP Printing Industries, Corp., IMC Eastern Corp, Island Transportation Corp., Nest Equities, Inc., Next Millennium Realty, LLC, Patel Trust July 29 1977CALIF, Rajen Patel, Tishcon Corp., and Utility Manufacturing Co., Inc. (collectively "Respondents") by the United States Environmental Protection Agency ("EPA") and requires the Respondents to perform a Remedial Design ("RD"), including pre-design investigations, at the New Cassel/Hicksville Groundwater Contamination Superfund Site ("Site") in the area downgradient of the New Cassel Industrial Area and Old Country Road in the towns of Westbury and Salisbury, Nassau County, New York (hereinafter referred to as "OU1").

2. This Order is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987) and further redelegated to Regional Administrators by EPA Delegation No. 14-14-B. This authority was further redelegated within Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

3. EPA has notified the New York State Department of Environmental Conservation ( "NYSDEC") of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

## II. PARTIES BOUND

4. This Order shall apply to and be binding upon Respondents and their directors, officials, employees, agents, successors, and assigns. No change in the status or control of any Respondent shall alter such Respondent's responsibilities under this Order.

5. Respondents are jointly and severally liable for implementing the Common Work Elements required by this Order. The Group A Respondents, Group B Respondents, and Group C Respondents are also, within their respective groups, each jointly and severally liable for implementing the activities required of each group. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. No Respondent shall interfere in any way with the performance of Work required as set forth in this Order by any other Respondents. In the event of the insolvency or failure of any one or more Respondents to implement the respective Work obligations under this order, the remaining Relevant Respondents shall complete all such requirements.

6. Until EPA notifies Respondents under Paragraph 115 that all Work Elements required pursuant to this Order have been completed, Respondents shall provide a copy of this Order to any successors before a controlling interest in such Respondent's assets or property rights are transferred to the successor.

## III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto, or incorporated by reference into this Order, for the purposes of this Order the following definitions shall apply:

a. "Central Plume" shall mean the area of groundwater contamination identified on Appendix 1 as Central Plume and all areas to which contamination has migrated therefrom within the limits of OU1 as set forth on Appendix 1.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601-9675.

c. "Common Work Elements" shall mean those activities associated with the work to be performed by all Respondents to this Order as set forth in the OU1 SOW related to the design of the treatment system. Common Work Elements shall also mean the coordination of submittals into one coordinated, combined, comprehensive, and cohesive submittal for the various Work Elements to be performed under the OU1 SOW.

d. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Eastern Plume" shall mean the area of groundwater contamination identified on Appendix 1 as Eastern Plume and all areas to which contamination has migrated therefrom within the limits of OU1 as set forth on Appendix 1.

f. "Effective Date" shall be the effective date of this Order as provided in Section XXII (Opportunity to Confer, Effective Date).

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

h. "Group A Respondents" shall mean Respondents generally associated with the Eastern Plume – Nest Equities, Inc., Next Millennium Realty, LLC, 101 Frost Street, LP, and Utility Manufacturing Co., Inc.

i. "Group B Respondents" shall mean Respondents generally associated with the Central Plume – 1st State, LLC, 1150 Motor Parkway, LLC, Arkwin Industries, Inc., Grand Machinery Exchange, Inc., Amee Patel, Rajen Patel, Patel Trust July 29 1977CALIF, and Tishcon Corporation.

j. "Group C Respondents" shall mean Respondents generally associated with the Western Plume – 570 Properties, Inc., Atlas Graphics, Inc., Barouh Eaton Allen Corp., HDP Printing Industries, Corp., IMC Eastern Corp. (f/k/a IMC Magnetics Corp.), and Island Transportation Corp.

k. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, and codified at 40 C.F.R. Part 300, including any amendments thereto.

l. "NCIA Properties" shall mean 299 Main Street, 570 Main Street, 567 Main Street, 648-656, 662-670 Main Street and 66 Brooklyn Avenue, 700 Main Street, 770 Main Street, 118-130 Swalm Street, 125 State Street, 29 New York Avenue, 30-36 New York Avenue and 30-33 Brooklyn Avenue, 62 Kinkel Street, 36 Sylvester Street, 89 Frost Street, and 101 Frost Street in Westbury, New York.

m. "NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State, defined below.

n. "Operable Unit 1" or "OU1" shall mean the area of groundwater downgradient and south of Old Country Road, which is impacted by the New Cassel Industrial Area,, located primarily in Salisbury, an unincorporated area of the Town of Hempstead, and within the Hamlet of New Cassel in the Town of North Hempstead. OU1 is depicted generally on the map attached as Appendix 1.

o. "OU1 Statement of Work" or "OU1 SOW" shall mean the statement of work for implementation of the RD for OU1 at the Site which is set forth in Appendix 3 to this Order and any modifications made thereto in accordance with this Order.

p. "OU1 Work Plan" or "RD Work Plan" shall mean the document to be developed consistent with the OU1 SOW and approved by EPA, and any amendments thereto.

q. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

r. "Parties" shall mean EPA and Respondents.

s. "Performance Standards" shall mean the cleanup levels and Remedial Action Objectives and other measures of achievement of the goals of the Remedial Action set forth in the Record of Decision, defined below, and in Section II of the OU1 SOW.

t. "Pre-Design Investigation Work Plan" or "PDI Work Plan" shall mean those documents related to Section V. of the OU1 SOW that are developed consistent with the OU1 SOW and approved by EPA, and any amendments thereto.

u. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU1 of the Site signed on September 30, 2013 by the Director of the Emergency and Remedial Response Division, EPA Region 2, including all attachments thereto, attached hereto as Appendix 4.

v. "Remedial Action" or "RA" shall mean the remedy for OU1 as set forth in the ROD.

w. "Remedial Design" or "RD" shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action for OU1 pursuant to the RD Work Plan.

x. "Respondents" shall mean 1st State, LLC, 101 Frost Street, LP, 570 Properties, Inc., 1150 Motor Parkway, LLC, Amee Patel, Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen, Corp., Grand Machinery Exchange, Inc., HDP Printing Industries, Corp., IMC Eastern Corp. (f/k/a IMC Magnetics, Corp.), Island Transportation Corp., Nest Equities, Inc., Next Millennium Realty, LLC, Patel Trust July 29 1977CALIF, Rajen Patel, Tishcon Corp., and Utility Manufacturing Co., Inc.

y. "Relevant Respondents" shall mean the relevant Group A, Group B, and/or Group C Respondents, or all Respondents, as applicable, that are responsible for performing a particular Work Element, as those requirements are set forth in subparagraphs c. and hh to mm.

z. "Section" shall mean a portion of this Order identified by an upper-case Roman numeral and includes one or more Paragraphs.

aa. "Order" shall mean this Administrative Order, Index No. CERCLA-02-2015-2019, and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

bb. "Site" shall mean the New Cassel/Hicksville Groundwater Contamination Superfund Site, which is an approximately 6.5 square mile area of groundwater contamination within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York, and associated source areas. The Site is depicted generally on the map attached as Appendix 5.

cc. "State" shall mean the State of New York.

dd. "United States" shall mean the United States of America.

ee. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §9601(14), (ii) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. §9601(33), and (iii) any "solid waste" under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6903(27).

ff. "Western Plume" shall mean the area of groundwater contamination identified on Appendix 1 as Western Plume and all areas to which contamination has migrated therefrom within the limits of OU1 as set forth on Appendix 1.

gg. "Work" shall mean all activities that Respondents are required to perform under this Order, including the various Work Elements set forth herein. Not all Respondents are required to perform all activities, but all Respondents shall perform Common Work Elements. Work does not include activities required by Section XI (Record Retention).

hh. "Work Elements" shall mean, collectively, the Common Work Elements and Work Elements 1 through 5, as those terms are defined herein.

ii. "Work Element 1" shall mean the Work required to be performed under the OU1 SOW related to the RD of the groundwater treatment system(s) as it pertains to the Eastern Plume.

jj. "Work Element 2" shall mean the Work required to be performed under the OU1 SOW related to the RD of the groundwater treatment system(s) as it pertains to the Central Plume.

kk. "Work Element 3" shall mean the Work required to be performed under the OU1 SOW related to the RD of the groundwater treatment system(s) as it pertains to the Western Plume.

ll. "Work Element 4" shall mean the work required to be performed under the OU1 SOW related to the pre-design investigation necessary to address data gaps between the Eastern Plume and the Central Plume to support Work Elements 1 and 2 of the RD.

mm. "Work Element 5" shall mean the work required to be performed under the OU1 SOW related to the pre-design investigation necessary to address data gaps between the Central Plume and the Western Plume to support Work Elements 2 and 3 of the RD.

## IV. FINDINGS OF FACT

8. The Site comprises a widespread area of groundwater contamination within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York. The Site is estimated to include approximately 6.5 square miles that have been characterized by volatile organic compound (

"VOC") contaminated groundwater that has impacted eleven public supply wells, including four Town of Hempstead wells (Bowling Green I and II, Roosevelt Field 10, and Levittown 2A), six Hicksville wells (4-2, 5-2, 5-3, 8-1, 8-3, and 9-3), and one Village of Westbury well (11).

9. The eleven public supply wells provide drinking water to a population of an estimated 38,624.

10. The Towns of North Hempstead, Hempstead, and Oyster Bay encompass residential, commercial and industrial areas.

11. The area comprising OU1 of the Site includes approximately 211 acres and consists of residential properties, as well as some commercial areas. A part of the Site, upgradient of OU1, is the New Cassel Industrial Area ("NCIA"), encompassing approximately 170 acres of industrial and commercial property, which is bounded by the Long Island Railroad, Frost Street, Old Country Road and Grand Boulevard in North Hempstead, Nassau County, New York.

12. The NCIA was developed for industrial use during the 1950s through the 1970s and currently has an estimated 200 industrial and commercial properties. On-property leach pools and/or dry wells were generally used for disposal of wastewater until sewers were installed by the mid-1980s.

13. In 1986, as part of a county-wide groundwater investigation, the Nassau County Department of Health ("NCDOH") identified extensive groundwater contamination throughout the NCIA. Six groundwater monitoring wells revealed concentrations of total VOCs above 1,000 micrograms per liter ("ug/L"), with a maximum concentration of nearly 10,000 ug/L. Results of sampling of upgradient groundwater monitoring wells appeared to isolate the NCIA as the source. Sampling of deeper groundwater monitoring wells in and downgradient of the NCIA also indicated that contamination has migrated into the Magothy Aquifer to at least 260 feet below ground surface ( "bgs") and is present in significant concentrations (detections as high as 2,700 ug/L of total VOCs) at about 100 feet.

14. In 1988, NYSDEC listed the NCIA as a Class 2 site in the New York State Registry of Inactive Hazardous Waste Disposal Sites ("State Registry").

15. In 1990, the Town of Hempstead installed a granular activated carbon ("GAC") system at the location of the two Bowling Green Water District water supply wells, which is directly downgradient off the NCIA. In 1993, the NCDOH approved the GAC system for full operation. The GAC system commenced operations, and it has remained in operation since. In 1995, to supplement the GAC system, construction began for an air stripper tower. Construction of the air stripper tower was completed in 1997. The air stripper tower commenced operations, and it has remained in operation since.

16. From 1994 to 1999, NYSDEC conducted preliminary site assessments and field investigations to identify the sources of contamination within the NCIA. Based on the findings of these assessments and investigations, 17 individual facilities within the NCIA were identified and listed as Class 2 sites on the State Registry between May 1995 and September 1999.

17. Of the 17 facilities within the NCIA that were initially listed as Class 2 sites on the State

Registry, NYSDEC, under New York State authority, selected nine remedies relating to soil contamination, four remedies relating to groundwater contamination, and eight remedies addressing both groundwater and soil contamination.

18. From 1995 to 2000, NYSDEC conducted groundwater sampling at locations south of the NCIA, Old Country Road, and Grand Boulevard. In September 2000, NYSDEC issued a Remedial Investigation/Feasibility Study Report under New York State authority for the area it referred to as the "New Cassel Industrial Area Off-site Groundwater." NYSDEC determined that tetrachloroethylene ("PCE"), trichloroethylene ("TCE"), and 1,1,1-Trichloroethane ("1,1,1-TCA"), all VOCs, were present above New York State standards, criteria, and guidance in the groundwater downgradient of the NCIA, in the area which EPA has since designated as OU1.

19. Based on NYSDEC's investigations of the "New Cassel Industrial Area Off-site Groundwater," NYSDEC determined that VOCs released from facilities in the NCIA had migrated to groundwater downgradient of the NCIA. In 2003, NYSDEC selected a remedy under its state authorities to address the "New Cassel Industrial Area Off-site Groundwater," which consisted of remediation of the upper and deep portion of the aquifer (to a depth of 225 feet bgs) with in-well vapor stripping/localized vapor treatment. NYSDEC's remedy included a contingency plan to utilize ex-situ extraction and treatment if pilot testing determined that in-well vapor stripping/localized vapor treatment proved to be less practical for engineering or economic reasons. NYSDEC's remedy was considered the third operable unit of NYSDEC's Class 2 NCIA site on the State's Registry. Its third operable unit covers a portion of the area that EPA has designated as OU1.

20. Pre-design investigations conducted by NYSDEC consultants subsequent to the selection of its 2003 remedy caused NYSDEC to determine that in-well vapor stripping may not be an effective technology for remediating this affected groundwater. NYSDEC decided that the contingency called for in the remedy was more appropriate and commenced pre-design studies of this technology. NYSDEC never implemented the remedy selected in 2003 for the "New Cassel Industrial Area Off-site Groundwater."

21. By letter dated December 27, 2010, NYSDEC requested "that the area encompassing contaminated groundwater migrating from the New Cassel Industrial Area Sites, Off-site Groundwater South of the New Cassel Industrial Area, Operable Unit No. 3, the General Instruments Corp., Site No. 130020, Operable Unit 2, and the 70-140 Cantiague Rock Rd./Former Sylvania, Site No. V00089, Operable Unit 2, be nominated to the National Priorities List."

22. On July 19, 2013, EPA issued a Supplemental Remedial Investigation Memorandum which, among other things, summarized the groundwater data collected by NYSDEC through 2011 in the area designated by EPA as OU1. EPA determined that three groundwater plumes exist at OU1 (designated as the eastern, central, and western plumes). These plumes are characterized by chlorinated VOCs, primarily PCE, 1,1,1-TCA, and TCE. In the Eastern Plume, the highest concentrations of PCE (16,000 ug/L) and TCE (1,800 ug/L) were observed during NYSDEC's April 2011 pre-design investigation sampling. In the Central Plume, the highest concentrations of 1,1,1-TCA (1,400 ug/L), PCE (330 ug/L), and TCE (1,800 ug/L) were observed during NYSDEC's 2008 pre-design investigation sampling. In the Western Plume, the highest concentrations of PCE (3,700 ug/L) and TCE (5,100 ug/L) were observed during NYSDEC's 2008 pre-design investigation

sampling. Other contaminants found in the groundwater at OU1 include, but are not limited to, vinyl chloride, chloroform, cis-1,2-dichloroethene, 1,1-dichloroethene, 1,1,-dichloroethane, and 1,1,2,2-tetrachloroethane.

23. EPA concluded in its May 2013 Human Health Risk Assessment that there is an unacceptable future noncancer and cancer risks to human health based on the presence of VOCs in the groundwater at OU1 at the Site.

24. Pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA published notice of the completion of the Supplemental Remedial Investigation and Feasibility Study and availability of the proposed plan for a remedial action for OU1 on July 26, 2013, and provided opportunity for public comment on the proposed remedial action during a 30-day public comment period. EPA extended the public comment period on the proposed remedial action to September 24, 2013.

25. Based on the results of the Supplemental Remedial Investigation and Feasibility Study for OU1 dated July 23, 2013, EPA issued a ROD for OU1 on September 30, 2013, in which it selected a remedy for OU1 at the Site. The OU1 remedy includes, but is not limited to, the following: 1) a combination of in-situ treatment of groundwater via in-well vapor stripping and extraction of groundwater and ex-situ treatment of extracted groundwater prior to discharge to a publicly-owned treatment works or reinjection to groundwater where concentrations of total VOCs are greater than 100 ug/L; 2) in-situ chemical treatment of high concentration contaminant areas, as appropriate; 3) implementation of long-term monitoring of groundwater in OU1 to ensure the remedial action objectives are achieved; 4) development of a Site Management Plan to ensure proper management of the remedy post-construction; and 5) institutional controls consisting of maintaining any existing local requirements that prevent installation of drinking water wells and issuing informational devices to limit exposure to contaminated groundwater.

26. Exposure to high levels of VOCs can cause a variety of adverse health effects, including, but not limited to, damage to the liver and kidneys.

27. The NCIA Properties are properties upgradient of OU1, where it has been determined that hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

28. Respondent 1st State, LLC, a limited liability company organized under the laws of the State of New York, is the current owner of a facility located at 125 State Street, Westbury, New York on which, among other things, 1,1,1-TCA was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

29. Respondent 101 Frost Street, LP, a limited partnership organized under the laws of the State of New York, is the current owner of a facility located at 101 Frost Street, Westbury, New York on which, among other things, TCE and PCE were disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

30. Respondent 570 Properties, Inc., is a corporation organized under the laws of the State of New York, is the current owner of a facility located at 570 Main Street, Westbury, New York on

which, among other things, PCE and 1,1,1-TCA were disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

31. Respondent 1150 Motor Parkway LLC, a limited liability company organized under the laws of the State of New York, is the current owner of a facility located at 29 New York Avenue, Westbury, New York on which, among other things, 1,1,1-TCA was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

32. Respondent, Amee Patel, together with Respondent, Rajen Patel, are the current owners of a facility located at 30 New York Avenue, Westbury, New York on which 1,1,1-TCA was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

33. Respondent Arkwin Industries, Inc., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 648-656, 662-670 Main Street and 66 Brooklyn Avenue, Westbury, New York, and was the owner and operator of that facility at the time of disposal of, among other things, 1,1,1-TCA and PCE, and thus it is a responsible party within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. §9607(a)(1) and (2).

34. Respondent Atlas Graphics, Inc., a corporation organized under the laws of the State of New York, utilized TCE while operating a facility located at 567 Main Street, and was the owner of that facility at the time of disposal of TCE, and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

35. Respondent Barouh Eaton Allen Corp., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 118-130 Swalm Street, Westbury, New York, and was the owner of that facility at the time of disposal of PCE, and thus it is a responsible party within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. §9607(a)(1) and (2).

36. Respondent Grand Machinery Exchange, Inc., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 36 Sylvester Street, Westbury, New York, and was the owner at that facility at the time of disposal of 1,1,1-TCA, and thus it is a responsible party within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. §9607(a)(1) and (2).

37. Respondent HDP Printing Industries, Corp., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 567 Main Street, Westbury, New York on which TCE was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

38. Respondent IMC Eastern Corp. (f/k/a IMC Magnetics Corporation), a corporation which was organized under the laws of the State of New York, utilized, among other things, PCE and 1,1,1-TCA while operating at a facility located at 570 Main Street, Westbury, New York and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

39. Respondent Island Transportation Corporation, a corporation organized under the laws of the

State of New York, utilized TCE while operating at a facility located at 299 Main Street, Westbury, New York and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

40. Respondent Nest Equities, Inc., a corporation organized under the laws of the State of New York, is the current owner of a facility located at 700 Main Street, Westbury, New York at which, among other things, PCE was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

41. Respondent Next Millennium Realty, LLC, a limited liability company organized under the laws of the State of New York, is the current owner of facilities located at 89 Frost Street, Westbury, New York, and 770 Main Street, Westbury, New York, on which PCE and TCE were disposed, respectively, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

42. Respondent, Patel Trust July 29 1977CALIF, is the current owner of a facility located at 36 New York Avenue, Westbury, New York on which 1,1,1-TCA was disposed, and thus it is a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

43. Respondent Tishcon Corporation, a corporation organized under the laws of the State of New York, utilized, 1,1,1-TCA while operating at facilities located at 125 State Street, 30-36 New York Avenue, 30-33 Brooklyn Avenue, and 29 New York Avenue, all in Westbury, New York, and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

44. Respondent Utility Manufacturing Co., Inc., a corporation organized under the laws of the State of New York, utilized, among other things, PCE, while operating at a facility located at 700 Main Street, Westbury, New York, and thus it is a responsible party within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

45. The NCIA Properties are "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C §9601(9).

46. The Site, including the NCIA Properties, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

47. The contamination found at the Site, as identified in the Findings of Fact above, includes TCE, PCE, and 1,1,1-TCA, all of which are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

48. The discharge, dumping, and/or disposal and migration of hazardous substances at the Site constitutes a "release" of hazardous substances into the environment as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

49. Respondents are responsible parties within the meaning of Section 107(a)(1) and/or (2) of CERCLA, 42 U.S.C. §9607(a)(1) and/or (2), because they are owners or operators of facilities at the Site and/or owned and/or they operated facilities at the Site during which time hazardous substances were released there from.

50. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

51. The Director of the Emergency and Remedial Response Division has determined that the conditions at OU1 of the Site, including the release and/or threat of release of one or more of the above-described hazardous substances from the Site, may present an imminent and substantial endangerment to the public health or welfare or the environment.

52. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and are expected to effectuate effective remedial action.

## VI. ORDER

53. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for the ROD, it is hereby ordered that Respondents shall comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines set forth in this Order, attached to this Order, or incorporated by reference into this Order.

### A. Designation of Contractor(s) and Designated Project Coordinator

54. Within 10 days after the Effective Date of this Order, Respondents shall select a coordinator, to be known as the Designated Project Coordinator, and submit the name, address, qualifications and telephone number of the Designated Project Coordinator to EPA. The Designated Project Coordinator shall be responsible on behalf of Respondents for oversight of the implementation of the Work required under this Order including coordination amongst the various contractors in the event that more than one contractor is retained by Respondents, and e preparation and submittal of coordinated, combined, comprehensive, and cohesive documents required to be submitted under the different Work Elements. The Designated Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to oversee all aspects of the Work Elements required under this Order adequately. Respondents shall ensure that all Work requiring certification by a professional engineer licensed in New York State shall be reviewed and certified by such. The Designated Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Order.

55. Selection of the Designated Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Designated Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within 10 days following EPA's disapproval. Respondents may change their Designated Project

Coordinator provided that EPA has received written notice at least 10 days prior to the desired change. All changes of the Designated Project Coordinator shall be subject to EPA approval.

56. EPA correspondence related to the performance of the Work under this Order will be sent to the Designated Project Coordinator on behalf of Respondents. To the extent possible, the Designated Project Coordinator shall be present on-Site or readily available for EPA to contact during the performance of all Work and be retained by Respondents at all times until EPA issues a notice of completion of all Work Elements required under this Order pursuant to Paragraph 115. Notice by EPA in writing to the Designated Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work under this Order and shall be deemed effective upon receipt.

57. All activities required of Respondents under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, State, and/or local law or regulation consistent with Section 121 of CERCLA, 42 U.S.C. §9621, and all Work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

58. Respondents shall retain at least one contractor to perform one or more of the Work Elements. Respondents shall notify EPA of the name and qualifications of all proposed contractor(s) within 30 days of the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Order at least 30 days prior to commencement of such Work by such other contractor or subcontractor. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with The Uniform Federal Policy for Implementing Quality Systems ( "UFP-QS") (EPA/505/F-03/001, March 2005) by submitting a copy of each proposed contractor's Quality Management Plan ("QMP").

59. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondents to conduct Work. If EPA disapproves in writing any of Respondents' proposed contractors to conduct the Work, Respondents shall propose a different contractor within 15 days of receipt of EPA's disapproval. All changes to Respondents' contractors and/or subcontractors are subject to EPA approval.

60. Respondents shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the Work required by this Order. Respondents shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondents shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

## B. Description of Work

61. Respondents are jointly and severally liable for performance of the Common Work Elements as set forth in the OU1 SOW and under this Order and for all other general obligations under this Order, including, but not limited to, any necessary emergency response notifications, and monthly reports.

62. In addition to the requirements of Paragraph 61, Group A Respondents are also jointly and severally liable for the performance of Work Elements 1 and 4 as set forth in the OU1 SOW and under this Order.

63. In addition to the requirements of Paragraph 61, Group B Respondents are also jointly and severally liable for the performance of Work Elements 2, 4, and 5 as set forth in the OU1 SOW and under this Order.

64. In addition to the requirements of Paragraph 61, Group C Respondents are jointly and severally liable for performance of Work Elements 3 and 5 as set forth in the OU1 SOW and under this Order.

65. Notwithstanding the assignment of specific Work obligations as set forth above, Respondents shall coordinate their respective obligations in such a manner so as to provide only one coordinated, combined, comprehensive, and cohesive submission for all Relevant Respondents for each required submission under this Order. Respondents shall perform all actions required of them that are necessary to implement the Work as set forth in the OU1 SOW. All Work performed shall be in accordance with the provisions of this Order, the SOW, CERCLA, the NCP, and all applicable EPA guidance, including, but not limited to, guidance referenced in the SOW, as may be amended or modified by EPA. EPA's Remedial Project Manager shall use his/her best efforts to inform Respondents if new or revised guidance may apply to the Work. The SOW and all deliverables required by the SOW are incorporated into and an enforceable part of this Order.

66. Within sixty days of the Effective Date of the Order, Respondents shall submit a coordinated, combined, comprehensive and cohesive PDI Work Plan for the completion of activities to be conducted to gather sufficient information necessary to fully develop the RD Work within the boundaries of OU1 as specified in the OU1 SOW.

### C. EPA's Remedial Project Manager, Other Personnel, and Modifications to EPA-Approved Work Plan

67. EPA has designated Jennifer LaPoma of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region 2, as its Remedial Project Manager ("RPM"). EPA will notify Respondents of any change of its designated RPM. Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the RPM via email at lapoma.jennifer@epa.gov and, to the extent necessary, by first class mail at U.S. EPA, Region 2, 290 Broadway, 20th Floor, New York, NY 10007.

68. EPA's RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt any Work required under this Order and to take any necessary response action when she determines that

conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA RPM from the area under study or where Work under this Order is being performed shall not be cause for the stoppage or delay of Work.

69. As appropriate during the course of implementation of the actions required of Relevant Respondents pursuant to this Order, Relevant Respondents or their consultants or contractors, acting through the Designated Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the effective date of this Order, the Designated Project Coordinator may request, in writing, that EPA approve modification(s) to the EPA-approved Work Plan required by the SOW. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Relevant Respondents.

D. Plans and Reports Requiring EPA Approval

70. If EPA disapproves or otherwise requires any modifications to any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order or the SOW, Respondents shall have 10 days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a longer period is specified in the notice or approved by EPA, in its sole discretion. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the relevant time period. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

71. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and seek to recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

72. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally.

73. All plans, reports, and other submittals required to be submitted to EPA pursuant to this Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Order.

74. In the event that EPA takes over some but not all of the tasks required to be performed under this Order, Relevant Respondents shall incorporate and integrate information supplied by EPA into the final reports.

75. All plans, reports, and other deliverables submitted to EPA under this Order shall, upon approval or modification by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Order, the approved or modified portion shall be incorporated into and become enforceable under this Order.

## VII. SUBMISSION OF PLANS AND REPORTING REQUIREMENTS

76. Respondents shall submit a coordinated, combined, comprehensive, and cohesive written progress report to EPA concerning actions undertaken pursuant to this Order as provided in the SOW and pursuant to the schedules provided in the SOW until termination of this Order, unless otherwise directed in writing by EPA.

77. Respondents shall submit copies of all plans, reports, or other submissions required by this Order, the SOW, or any approved work plan as set forth below. Submission of any electronic submissions, if requested by EPA, must be in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. Reports should be submitted to the following unless otherwise notified by EPA:

1 hard copy and 1 electronic copy to:

U.S. Environmental Protection Agency Region 2
290 Broadway, 20th Floor
New York, New York 10007
Attention: New Cassel/Hicksville Groundwater Contamination Superfund Site Remedial Project Manager
212-637-4328
Lapoma.jennifer@epa.gov

1 electronic copy to:

New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency Region II
290 Broadway, 17th Floor
New York, New York 10007-1866
Attention: Attorney for New Cassel/Hicksville Groundwater Contamination Site
212-637-3183
kivowitz.sharon@epa.gov

1 hard copy and 1 electronic copy to:

Jeffrey L. Dyber, P.E.
Environmental Engineer 2
New York State Department of Environmental Conservation
Remedial Bureau A

625 Broadway
Albany, NY 12233-7015
518-402-9621
jldyber@dec.ny.gov
1 electronic copy to:

Jacqueline Nealon
New York State Department of Health
jen02@health.state.ny.us

## VIII. COMMUNITY RELATIONS

78. If requested by EPA, Respondents shall cooperate with EPA in providing information to the public relating to the Work required hereunder. As requested by EPA, Respondents shall participate in the preparation of all appropriate information for dissemination by EPA to the public and participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

## IX. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

79. Quality Assurance. Respondents shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan ( "QAPP") to be submitted pursuant to the SOW, and guidance identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories that have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by EPA.

80. Sampling.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on Respondents' behalf, during the period that this Order is effective, shall be submitted to EPA in monthly progress reports as more fully set forth in the SOW.

b. Respondents shall verbally notify EPA at least 7 days prior to conducting significant field events as described in the SOW or Work Plans. At EPA's verbal or written request, or the request of EPA's oversight contractor, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Order.

81. Access to Information.

a. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to their respective activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work which each Respondent is required to perform. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and 40 C.F.R. §2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Order for which Respondents assert business confidentiality claims.

c. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by Respondent. However, no document, report, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that it is privileged or confidential.

d. No claim of confidentiality shall be made with respect to any data generated as part of the Work performed under this Order, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## X. SITE ACCESS

82. If any Respondent owns or controls any part of the Site, or any other property where access is needed to implement this Order, such Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, to conduct any activity related to this Order. Such Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee.

83. Where any action under this Order is to be performed in areas owned by, or in possession of, someone other than a Respondent, Relevant Respondents shall use their best efforts to obtain all necessary access agreements to such property based on the respective Work Element(s) that necessitates the access within 30 days after the Effective Date, or within 30 days that the need for access arises, whichever is later, or as otherwise specified in writing by EPA. Relevant Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Relevant Respondents shall describe in writing their efforts to obtain access. EPA may in its sole discretion assist such Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate.

84. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), and any other applicable statutes or regulations.

85. If Respondents cannot obtain access agreements, EPA may perform those tasks or activities. If EPA performs those tasks or activities, Respondents shall perform all other activities not requiring access to such property and shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

## XI. RECORD RETENTION

86. During the pendency of this Order and until ten years after Respondents' receipt of EPA's notification that the Work has been completed, Respondents shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in their possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Respondents shall also instruct their contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work until ten years after notification that the Work has been completed.

87. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such documents, records, or other information and, upon request by EPA, Respondents shall deliver any such documents, records, or other information to EPA.

## XII. OFF-SITE SHIPMENTS

88. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), (b) Section 300.440 of

the NCP,(c) RCRA, (d) the Toxic Substances Control Act, 15 U.S.C. §2601-2629, and (e) all other applicable federal and New York State requirements.

89. If hazardous substances from the Site are to be shipped outside of the State of New York, Respondents shall provide prior notification of such Waste Material shipments in accordance with the EPA Memorandum entitled, "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive No. 9330.2-07, September 14, 1989). At least 7 days prior to such Waste Material shipments, Respondents shall notify the environmental agency of the accepting state and EPA of the following: (a) the name and location of the facility to which the Waste Material is to be shipped; (b) the type and quantity of Waste Material to be shipped; (c) the expected schedule for the Waste Material shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste Material.

90. Certificates of destruction must be provided to EPA upon Respondents' receipt of such. These certificates must be included in the monthly progress reports set forth in the SOW and/or in the Final Report.

## XIII. COMPLIANCE WITH OTHER LAWS

91. Respondents shall undertake all action that this Order requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Order. The activities conducted pursuant to this Order, if performed in a manner approved by EPA, shall be considered consistent with the NCP.

92. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. §9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

93. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

94. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center [(800) 424-8802], Respondents shall immediately orally notify the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6658. Respondents shall also submit a written report to EPA within 7 days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this Paragraph are in addition to, not

in lieu of, any reporting requirements under CERCLA Section 103, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11004.

95. In the event any action or occurrence during Respondents' performance of any Work Element(s) pursuant to this Order causes or threatens to cause a release of a hazardous substance or may present an immediate threat to public health or welfare or the environment, Relevant Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondents shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondents (a) to stop further implementation of the Work pursuant to this Order or (b) to take other and further actions reasonably necessary to abate the threat.

96. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

## XV. MODIFICATIONS

97. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval from EPA as may be required by this Order and to comply with all requirements of this Order.

## XVI. DELAY IN PERFORMANCE

98. Any delay in performance of a Work Element by the Relevant Respondents under this Order that, in EPA's judgment, is not properly justified under the terms of the Paragraph below shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Relevant Respondents' obligation to perform their obligations fully under the terms and conditions of this Order.

99. Relevant Respondents shall notify EPA of any delay or anticipated delay in performing any Work Element required under this Order. Such notification shall be made by telephone to EPA's RPM as soon as Respondents know that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 2 days after notifying EPA by telephone, Relevant Respondents shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Relevant Respondents should not be held strictly accountable for failing to comply with the relevant Work Element required under this Order, the measures taken and/or planned to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased cost or expense

associated with the implementation of the activities called for in this Order is not a justification for any delay in performance.

## XVII. ENFORCEMENT AND RESERVATION OF RIGHTS

100. Notwithstanding any other provision of this Order, any willful violation, or failure or refusal of a Respondent to comply with any provision of this Order, may subject such Respondent to civil penalties of up to $37,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19). In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C § 9606. In addition, nothing in this Order shall limit EPA's authority under Section XX (Financial Assurance). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

101. Nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs which have been or may be incurred by the United States related to this Order or the Site.

## XVIII. OTHER CLAIMS

102. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

103. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against any Respondent or any person not a party to this Order for any liability that any Respondent or other person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§9606(a) and 9607. Nothing herein shall constitute a finding that Respondents are the only responsible parties with respect to the release and threatened release of hazardous substances at and from the Site.

104. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

105. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 CFR §300.700(d).

## XIX. INSURANCE

106. At least 5 days prior to commencing any Work at the Site, Respondents shall submit to EPA a certification or certifications that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

## XX. FINANCIAL ASSURANCE

107. In order to ensure completion of the Work, Group A Respondents, Group B Respondents and Group C Respondents shall secure financial assurance, initially in the amount of $1,000,000 each ( "collectively, the Estimated Cost of the Work"). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available under "Financial Assurance" at http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm), and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work required by this Order; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when EPA's Chief of the New York Remediation Branch, Emergency and Remedial Response Division, advises the trustee in writing that: (A) payments are necessary to fulfill the affected Respondents' obligations under the Order; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or peformance in accordance with Paragraph 112 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 112 (Access to Financial Assurance);

d. A demonstration by one or more Respondents that each such Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section

for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

e. A guarantee to fund or perform the Work executed by one of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

108. Standby Trust. If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 107.a., and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 112 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 109. Until the standby trust fund is funded pursuant to Paragraph 112 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

109. Within 30 days after the Effective Date, Respondents shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 107 for EPA's review. Within [**insert appropriate time period (e.g., 60-90)**] days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondents' financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the [**insert desired recipient(s) (e.g., Regional Financial Management Officer, Regional financial assurance specialist, Regional attorney, and/or RPM) and relevant contact information if not provided elsewhere in the Order**].

110. If Respondents provide financial assurance by means of a demonstration or guarantee under Paragraph 107.d or 107.e, the affected Respondents shall also comply, and shall ensure that their guarantors comply, with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 90 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification to EPA no later than 30 days, in accordance with Paragraph 111, after any such entity determines that it no longer satisfies the financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" mean the sum of all environmental

obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated, in addition to the Estimated Cost of the Work under this Order; (3) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 107.d or 107.e; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

111. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondents shall follow the procedures of Paragraph 112 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in accordance with the terms of this Order.

112. Access to Financial Assurance.

a. If EPA determines that Respondents (1) have ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondents and the financial assurance provider regarding the affected Respondents' failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

113. Modification of Amount, Form, or Terms of Financial Assurance. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to

reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in Paragraph 109, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 107 and 108. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount of the financial assurance mechanism only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondents shall submit to the EPA individual(s) referenced in Paragraph 109 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

114. Release, Cancellation, or Discontinuation of Financial Assurance. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

## XXI. TERMINATION AND SATISFACTION

115. Upon a determination by EPA (following its approval of the RD Report referred to in the SOW) that all the Work Elements required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondents in writing.

## XXII. OPPORTUNITY TO CONFER, EFFECTIVE DATE

116. This Order shall be effective 10 days after receipt by Respondents, unless a conference is timely requested pursuant to Paragraph 117 below. If such a conference is timely requested, this Order shall become effective 3 days following the date the conference is held, unless the effective date is modified or extended by EPA or the Order is revoked. All times for performance of ordered activities shall be calculated from this effective date.

117. Respondents may, within 7 days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within 7 days of Respondents' request for a conference, unless otherwise mutually agreed to.

118. If a conference is held, any Respondent may present any information, arguments, or comments regarding this Order. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, any Respondent or group of Respondents may appear in person or by an attorney or other representative, and the conference may be conducted in person or telephonically.

119. A request for a conference must be made by telephone or email to Sharon Kivowitz, Assistant Regional Counsel, Office of Regional Counsel, EPA Region II, at (212) 637-3183 followed by written confirmation to kivowitz.sharon@epa.gov.

## XXIII. NOTICE OF INTENT TO COMPLY

120. Respondents shall provide written notice to EPA, either individually or collectively, not later than 3 days after the effective date of this Order stating whether one or more Respondents will comply with the terms of this Order and clearly identifying which Relevant Respondent(s) it represents. If Respondents do not unequivocally commit to perform the Work required by this Order, those non-performing Respondents shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Any Respondent's written notice of a refusal to comply shall describe, using facts that exist on or prior to the Effective Date of this Order, any "sufficient cause" defenses asserted by such Respondent under Sections 106(b)(1) and 107(c)(3) of CERCLA. Any Respondent's written notice shall be sent to the EPA addressee listed in Paragraph 77 above as well as to Ms. Kivowitz. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be an acceptance of Respondents' assertions.

U.S. ENVIRONMENTAL PROTECTION AGENCY

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Walter E. Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II

Date of Issuance